IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. [illegible] 85

CENTRAL STATES ELECTRIC COMPANY,
Petitioner,

vs.

CITY OF MUSCATINE, IOWA,

and

ELMER E. JOHNSON, for himself and the users of natural gas in the City of Greenfield, Iowa, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

BERT L. KLOOSTER,
Attorney for Petitioner.

PERRY M. CHADWICK,
ROSCOE C. NASH,
Of Counsel.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of CENTRAL STATES ELECTRIC COMPANY (hereinafter called "Central") respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Central during the period here involved was a corporation engaged in the utility business in the State of Iowa

and elsewhere (R. 106). During this period it purchased natural gas from Natural Gas Pipeline Company of America under contract with such Company and resold the same in the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa (R. 107, 108). Natural Gas Pipeline Company of America was a natural gas company subject to the provisions of the Natural Gas Act and resold at wholesale the natural gas transported by it to local distributors, such as Central, in Illinois, Iowa and elsewhere (R. 9, 10).

The issues presented hereby arise on the original and supplemental petition of Central for intervention (R. 106, 134) in proceedings ancillary to proceedings initiated by Natural Gas Pipeline Company of America and Texoma Natural Gas Company (hereinafter sometimes called the "Natural Gas Companies") in the Court of Appeals under Section 19(b) of the Natural Gas Act (15 U.S.C. 717r(b)) (R. 8). The original proceedings (identified below as Cause No. 7454) were filed to review an interim rate order entered on July 23, 1940, as amended by an order entered August 8, 1940, by the Federal Power Commission, which directed the Natural Gas Companies to reduce their rates on natural gas so as to reflect an annual reduction in their operating revenues of not less than $3,750,000.00 and to make this reduction effective as to all bills regularly rendered on and after September 1, 1940 (R. 1, 6, 7). The validity of this order was sustained by this Court in *Federal Power Commission* v. *Natural Gas Pipeline Company of America*, 315 U.S. 575, and this Court therein reversed the judgment of the Court of Appeals vacating said order.

Prior to the commencement of the original proceedings the Natural Gas Companies filed a petition in the Court of Appeals, identified as Cause No. 7439, to obtain a temporary stay of the interim rate order pending the Natural Gas Companies' application for rehearing thereon before the Federal Power Commission (R. 32, 33, 34). Such a

stay order was entered on August 30, 1940, in Cause No. 7439, which stay order provided, among other things, the following:

> "That this order will become effective upon the execution and delivery to the Clerk of this court by petitioners of their joint and several bond in the penal sum of $1,000,000, conditioned on their refunding to those who purchased natural gas from petitioners at wholesale, as their several interests appear, the amount represented by the reduction in revenues as directed by the Federal Power Commission in its order dated July 23, 1940, if the order last mentioned be sustained": (R. 34).

The foregoing temporary stay order was dissolved on November 1, 1940 (R. 35).

Also on November 1, 1940, a stay order was entered in Cause No. 7454 staying the interim rate order until the further order of the court (R. 28, 29). On November 26, 1940, an order was entered in Cause No. 7454 and in Cause No. 7439, which provided that as a condition to said stay order the Natural Gas Companies should forthwith file their bond without surety in the penal sum of $1,000,000.00, conditioned in all respects the same as the bond filed in Cause No. 7439 by the Natural Gas Companies (R. 29, 36).

On December 3, 1940, in conformity with the order of November 26, 1940, the Natural Gas Companies filed their bond in Cause No. 7454 conditioned as follows:

> "The condition of this obligation is such that if the undersigned shall pay or cause to be paid to the purchasers at wholesale of natural gas from Natural Gas Pipeline Company of America as their several interests appear the amounts representing the reduction in the gross revenues of Natural Gas Pipeline Company of America which shall have accrued pending judicial review of the order of the Federal Power Commission dated July 23, 1940, directing the undersigned, Natural Gas Pipeline Company of America, to file new schedules of rates and charges to reflect

> "a reduction of not less than $3,750,000 per annum in the operating revenues of said Natural Gas Pipeline Company of America together with all costs which may be adjudged against them should said order last mentioned be sustained, then this obligation shall become null and void and of no further force and effect" (R. 29, 30).

The aforesaid bond was approved by order entered on December 3, 1940 (R. 31).

On March 16, 1942, this Court rendered its decision sustaining the interim rate order of the Federal Power Commission (315 U.S. 575) and the Natural Gas Companies thereupon became liable to refund, in accordance with their aforesaid bond, the amount paid to them in excess of the rates permitted by the order during the period of the stay thereof.

On May 22, 1942, which was prior to payment of the amount due on the bond, the Court of Appeals filed an opinion deciding that it was its mandatory duty to take exclusive jurisdiction and control over the refund (when made) and to determine the rights of all claimants thereto (R. 36, 45). An order was entered on June 24, 1942, pursuant to this opinion by which the court took jurisdiction of the refund and enjoined all claimants thereto from proceeding in any other court (R. 51, 52). It appears from the opinion that the Natural Gas Companies had by petition sought the relief granted by the order on the ground that suits had been filed against them in other courts by some of the ultimate consumers of gas sold to such consumers by the local distributors thereof and that unless the Court of Appeals retained jurisdiction of the refund they would be subjected to numerous similar suits (R. 37, 38). The Illinois Commerce Commission filed an answer in response to the petition of the Natural Gas Companies in which it was alleged that the rates charged by the local distributors in Illinois were fixed by the Com-

mission and necessarily reflect the prices paid by the local distributors to the Natural Gas Companies and that the refund representing the excessive rates paid by the local distributors was collected from the ultimate consumers and was equitably due them (R. 38). The local distributors then before the court (which did not include Central) agreed that the refund should equitably be paid to the ultimate consumers who purchased gas from them (R. 38). Since Central was not a party to this agreement, it could only affect the relations between the local distributors who were parties thereto and the ultimate consumers who purchased gas from them.

On June 29, 1942, Central wrote a letter to the Clerk of the Court of Appeals, in response to a letter from him, in which letter Central asserted that the portion of the refund representing excessive rates paid by it during the refund period should be repaid to it and not paid to the ultimate consumers (R. 56, 59).

On June 30, 1942, the Court of Appeals rendered a memorandum opinion in which it purported to weigh and consider the relative rights and interests in general of all local distributors and ultimate consumers in the refund (R. 60). As a result of this consideration the court found that since the rates charged by the local distributors to the ultimate consumers included the excess charges paid by the local distributors to the Natural Gas Companies, the ultimate consumers were, in equity, entitled to receive this excess which was to be refunded by the Natural Gas Companies (R. 62, 63). In other words, the court found that the local distributors in general, as stated in its opinion, were "merely conduits, by which natural gas transported by" the Natural Gas Companies "was delivered to customers by utilities" (R. 62).

In making the aforesaid finding, which apparently was based on the allegations contained in the above mentioned

answer of the Illinois Commerce Commission and disclaimers of interest in the refund filed by most of the local distributors involved (R. 47, 48, 49, 50) (but not by Central), the Court of Appeals assumed jurisdiction to review the contractual relations between the local distributors and the ultimate consumers and to adjudge their respective equities in and to the refund presumably on the conclusion, not supported by evidence, that the rates charged to the ultimate consumers during the refund period in all events included the excessive rates paid by the local distributors during that period to the Natural Gas Companies. In effect the Court of Appeals by determining what the contractual relations between the local distributors and the ultimate consumers were or should have been during the refund period and by finding that the refund equitably belonged to the ultimate consumers assumed jurisdiction to and did retroactively reduce the local rates of the local distributors during the refund period. This determination was made and declared by the court to be generally binding on all local distributors even though Central was not then a party to the cause and had never by any means agreed to a reduction of the rates which it charged its customers.

On July 1, 1942, the Natural Gas Companies, in accordance with their aforesaid bond, deposited with the Clerk of the Court of Appeals the sum of $6,377,913.52 (R. 64, 65). This sum, exclusive of interest included therein, represented that part of the rates in excess of the rates permitted by the rate order paid to the Natural Gas Companies by the local distributors (including Central) for natural gas purchased by them from the Natural Gas Companies during the refund period (R. 29, 30, 36, 37).

Thereafter, in conformity with the aforesaid opinions of May 22, 1942, and June 30, 1942, the Court of Appeals entered a show cause order (reported in 131 Fed. 2d 137) which, among other things, (a) fixed the refund period as

the period from August 1, 1940, to March 31, 1942, inclusive, (b) determined that the fund of $6,377,913.52, less all fees, costs and expenses of distribution thereof, was the property of the ultimate consumers of the natural gas purchased by the local distributors from the Natural Gas Companies and was not the property of such local distributors, (c) allocated said fund to certain but not all of the ultimate consumers or customers of the various local distributors, including Central's ultimate consumers, who were allocated the sum of $25,708.54, (d) found that industrial and home heating users of gas should not participate in the refund, (e) reserved jurisdiction of said fund for the purpose of protecting all persons having rights therein, and (f) directed all claimants to said fund to show cause why the order should not be binding on them (R. 67-80).

Notwithstanding the above opinions and orders, the Court of Appeals expressly recognized that the same were not binding on Central by entering an order on November 24, 1942, in which it found that Central had raised an issue as to whether it or its consumers were entitled to the refund (amounting to $25,708.54) and directed that such amount should be segregated from the remainder of the fund and dealt with separately (R. 81, 82). This order undoubtedly was entered as a consequence of Central's above mentioned letter to the Clerk of the Court of Appeals under date of June 25, 1942, since Central did not become a party to the proceedings until more than a year after the entry of this order.

On September 1, 1943, Central for the first time became a party to the proceedings by filing its original petition (R. 106) with the Court of Appeals and it was then granted leave to intervene (R. 115). In and by its petition Central requested that the refund of $25,708.54 be paid to it and not to the ultimate consumers for the reason that the rates in force during the refund period between Central and its customers were such as not to include therein any part

of the excess rates paid by Central to the Natural Gas Companies during that period, it being shown in the petition that Central purposely fixed its rates at less than a fair return on its investment in order to increase the volume of its business (R. 106, 107, 110).

On November 6, 1943, an order was entered on Central's petition which again recognized that the fund of $25,708.54 had theretofore been segregated by the court from the total fund and ordered to be dealt with separately (R. 115). This order directed that the purchasers of natural gas from Central and their respective representatives be notified of Central's claim to the fund and that they show cause why the relief sought by Central should not be granted (R. 115, 116). Pursuant to this order only the City of Muscatine and the Mayor of the City of Greenfield, purporting to represent the ultimate consumers in those cities, filed pleadings in response to the petition of Central in which they asserted that the fund belonged to the ultimate consumers (R. 116, 122, 126).

On February 14, 1944, the Court of Appeals, without hearing any evidence in support of Central's petition, entered an order denying the same "without prejudice" to Central's "making claim of adjustment with the Cities of Muscatine, Greenfield, Knoxville and Pella, all of the State of Iowa, or with the consumers of gas furnished by it in said cities" (R. 129). The bases of this order, as recited by the court therein, were that it was without jurisdiction to hear Central's claim since it involved a determination of "the reasonableness of petitioner's rates" and that the court had previously ruled that the refund made by the Natural Gas Companies belonged to the ultimate consumers (R. 129). In a separate order entered on the same day the court directed that the sum of $25,708.54 be paid to the Treasurers of the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, in various amounts (R. 130,

131). As grounds for this order the court stated therein that the fund of $25,708.54 belonged to the ultimate consumers of gas residing in the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, and that the court desired to pay said fund at the earliest possible date "to such parties as are entitled to the same and to permit of a determination of said rights by a court or body having jurisdiction thereof" (R. 130).

In and by the aforesaid orders of February 14, 1944, the Court of Appeals while disclaiming jurisdiction, nevertheless assumed jurisdiction to award said sum of $25,708.54 to the ultimate consumers and thereby retroactively reduced their rates during the refund period. This apparently was done on the basis announced by the court in its opinion of June 30, 1942, to the effect that the excessive rates paid by the local distributors (including Central) to the Natural Gas Companies during the refund period were included in the rates paid by the ultimate consumers during that period. Also this decision was made notwithstanding Central's claim that in its particular case the excessive rates paid by it to the Natural Gas Pipeline Company of America during the refund period were not included in the rates paid by the ultimate consumers during that period (R. 107, 109, 110, 111).

On March 11, 1944, Central filed its supplemental petition supplementary to its original petition setting forth additional grounds for the payment to it of said sum of $25,708.54 (R. 133, 134). The City of Muscatine and the Mayor of the City of Greenfield filed responses to the supplemental petition again claiming that said sum belonged to the ultimate consumers (R. 140, 144). Central was granted leave to file its supplemental petition and the same was denied on March 28, 1944, without any hearing or argument on the issues raised thereby (R. 146).

Central's supplemental petition shows as grounds for payment to it of said sum of $25,708.54 that:

1. Central was legally entitled to payment of said sum because (a) said sum represented excessive rates paid by Central to Natural Gas Pipeline Company of America, which except for the stay order entered by the Court of Appeals would have been retained by Central; (b) the rate order of the Federal Power Commission reduced the rates prevailing between Central and Natural Gas Pipeline Company of America, and Central as the only party in privity with said Company was entitled to benefit of the rate reduction; and (c) the aforesaid bond filed by the Natural Gas Companies to procure the stay order was conditioned on repayment of the excessive rates to the purchasers at wholesale (namely, the local distributors, including Central) (R. 134-139).

2. The Court of Appeals was without jurisdiction to award said sum to Central's ultimate consumers because (a) awarding said sum to them was tantamount to a retroactive reduction of the rates between Central and its ultimate consumers during the refund period, and the court decided by its orders of February 14, 1944, that it was without jurisdiction to determine the reasonableness of local rates; (b) the Natural Gas Act by its express terms does not apply to the local distribution of natural gas or to the facilities used for such distribution; and (c) the jurisdiction and powers of the Court of Appeals in these proceedings are not only derived from but are limited by the terms of the Natural Gas Act, which denies any jurisdiction over the transportation or sale of natural gas between a local distributor and its ultimate consumers (R. 134-139).

3. It was inequitable for the Court of Appeals to award said sum to Central's ultimate consumers be-

cause (a) the court's finding that such consumers were equitably entitled to said sum was based on a conclusion of fact (unsupported by any evidence whatsoever) that the burden of the excessive rates paid by Central to Natural Gas Pipeline Company of America during the refund period had been passed on by it to such consumers who had paid the same; and (b) the court disclaimed jurisdiction (on the theory that it was beyond its power to determine the reasonableness of local rates) to hear any evidence in support of Central's claim that it was equitably entitled to said sum because it and not the ultimate consumers had borne the burden of such excessive rates, yet the court at the same time inconsistently assumed jurisdiction to determine that the ultimate consumers had borne the burden of such excessive rates (R. 134-139).

The Cities of Muscatine and Greenfield do not allege in their pleadings that the ultimate consumers paid rates to Central during the refund period in excess of those fixed by their respective ordinances (R. 116, 122, 126, 140, 144). The pleadings of the City of Muscatine admit the allegations of Central's original petition that the rates fixed by its ordinances remained at the same level during the period beginning on August 6, 1936, and ending on February 4, 1943 (R. 117, 113).

The ultimate consumers in the Cities of Knoxville and Pella, Iowa, made no claim in these proceedings to any part of said sum of $25,708.54 and no pleadings were filed herein by or on their behalf.

Under the Iowa statutes the power to fix local rates on the sale of gas, electricity, etc., by a private public utility is vested in the municipalities and not in a state commission (App. 28, 29).

II.

JURISDICTION.

The order of the Court of Appeals denying Central's original petition was entered on February 14, 1944 (R. 129), and on that date a second order was entered directing that said sum of $25,708.54 be paid as set forth in that order to the four cities involved (R. 130, 131). Central filed its supplemental petition for a supplement to its original petition on March 11, 1944 (R. 133), and the same was denied by order entered on March 28, 1944 (R. 144). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C. 347a).

III.

QUESTIONS PRESENTED.

1. Whether under the Natural Gas Act a purchaser at wholesale of natural gas from a natural gas company is entitled, as a matter of legal right, to a return of rates paid therefor by the purchaser to such company in excess of the rates fixed by a valid order of the Federal Power Commission during the period of a stay of such order by a federal court?

2. Whether under the Natural Gas Act a federal court can deprive a wholesale purchaser of natural gas from a natural gas company of the benefit of a valid rate reduction order of the Federal Power Commission by staying such order and after determination that such stay is erroneous then direct that the fund representing the excessive rates paid by the wholesale purchaser to the natural gas company as a result of the stay be turned over to the ulti-

mate consumers of such gas and not returned to the wholesale purchaser?

3. Where funds are paid into the registry of a federal court pursuant to a bond deposited to obtain a stay of a rate order of the Federal Power Commission, which bond is conditioned for repayment to the purchaser at wholesale of natural gas from a natural gas company in the event the stay on review appears to be erroneous, and such event occurs, may a federal court nevertheless direct the payment of such funds to the ultimate consumers of such gas rather than to the purchaser at wholesale?

4. Whether under the Natural Gas Act a federal court denying its own jurisdiction may nevertheless in effect exercise jurisdiction to inquire into and regulate the contractual relationship between a local distributor of natural gas and the ultimate consumers of such gas?

5. Whether under the Natural Gas Act a federal court has jurisdiction to retroactively reduce rates between a wholesale purchaser of natural gas from a natural gas company and the ultimate consumers of such gas by awarding to such consumers a fund deposited in the registry of the court as the result of an erroneous stay of a valid order of the Federal Power Commission reducing rates between the natural gas company and the wholesale purchaser?

6. Whether under the Natural Gas Act a federal court which has erroneously stayed a valid rate reduction order of the Federal Power Commission and thereby caused a fund to be deposited in its registry may thereafter when its stay has been found erroneous determine, without a hearing or the presentation of evidence of any kind and while disclaiming any jurisdiction in the matter, that the fund represents excessive rates paid by the ultimate consumers of the natural gas involved and that they rather

than the wholesale purchaser of such gas are equitably entitled to said fund?

7. Whether under the Natural Gas Act a federal court which by exercise of its equitable powers has caused a fund to be deposited in its registry may thereafter refuse to finally determine the rights of adverse claimants to the fund and turn the same over to one of the rival claimants and compel the other rival claimant to resort to some other tribunal to have its asserted rights adjudicated?

8. Whether a federal court may order the payment of a fund, which belongs either to a wholesale purchaser of natural gas or to the ultimate consumers thereof and is on deposit in its registry, to an Iowa municipal corporation which under the laws of that state is without authority to receive, administer or distribute such fund?

9. Whether a federal court may direct the payment of a fund on deposit in its registry to parties not subject to its jurisdiction and who have failed to claim such fund in response to a show cause order entered by the court?

IV.

REASONS FOR ALLOWANCE OF THE WRIT.

The Court of Appeals, by awarding the fund here in dispute not to the party whose payments gave rise to such fund but to the purported municipal representatives of the ultimate consumers of the natural gas involved, has laid down important substantive and procedural rules under the Natural Gas Act. The importance of these rules goes far beyond this particular case since it is inevitable that substantial sums of money will be deposited with federal courts as a result of their orders staying rate reductions effected by the Federal Power Commission acting

under the Natural Gas Act. These rules have not been but should be settled by this Court.

The denial of Central's claim to the fund was made notwithstanding that: (a) Central was entitled to the benefit of the rate reduction order of the Federal Power Commission inasmuch as it was the only party in privity of contract with the Natural Gas Pipeline Company of America which was directed by the order to reduce its rates; (b) if the Court of Appeals had not entered its order staying the rate reduction order of the Commission, Central would have immediately enjoyed the benefit of the reduced rates effected by the order; and (c) the bond filed by the Natural Gas Companies was conditioned for the benefit of the purchasers at wholesale (which included Central) of natural gas from Natural Gas Pipeline Company of America and not for the benefit of the ultimate consumers who were awarded the fund (R. 29, 30). In view of the foregoing, the decision of the court below is probably in conflict with the decisions of this Court in *Adams* v. *Mills*, 286 U.S. 397, and *In the Matter of Lincoln Gas & Electric Light Company*, 256 U.S. 512.

The jurisdiction and powers of the Court of Appeals are not only derived from but are limited by the terms of the Natural Gas Act. Section 1(b) of this Act (15 U.S.C. 717(b)) declares that the Act shall apply to the transportation and sale of natural gas in interstate commerce, but that it "* * * shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution * * *." In view of this provision it seems apparent that the court below in awarding the fund to Central's ultimate consumers and by so reducing the rates between Central and such consumers during the refund period was exercising jurisdiction beyond and in violation of the express terms

of the Natural Gas Act. Thus the court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

The Court of Appeals by its decision on Central's petition has concluded as a matter of law that the burden of excessive rates paid by a wholesale purchaser of natural gas from a natural gas company is borne by the ultimate consumers of such gas. It is of little comfort to Central that the court stated that this conclusion and the award made as a consequence thereof were without prejudice to Central, since the orders of February 14, 1944, require the fund to be paid to Central's rival claimants and not to an independent stakeholder. In and by these orders the court declined jurisdiction to hear Central's petition on its merits and shifted the responsibility for such a hearing to another tribunal, and this probably conflicts with the decision of this Court in *United States* v. *Morgan*, 307 U. S. 183.

The decision of the Court of Appeals involves the anomalous result that where a reduction in rates is ordered by the Federal Power Commission and such rates are stayed by a federal court, then the ultimate consumers are entitled to the benefit of the rate reduction, but if such reduction is not stayed by a federal court then the benefit thereof flows to the party in privity of contract with the natural gas company which has been so directed to reduce its rates. Clearly the questions presented are of general importance and relate to the construction and application of the Natural Gas Act and the same have not been but should be settled by this Court.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be granted.

BERT L. KLOOSTER,
Attorney for Petitioner.

PERRY M. CHADWICK,
ROSCOE C. NASH,
Of Counsel.

BRIEF OF CENTRAL IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the Court of Appeals of May 22, 1942, appears at pages 36 to 46 of the record and is reported in 128 F. (2d) 481; its opinion of June 26, 1942, is at pages 55 and 56 and is reported in 129 F. (2d) 515; and its opinion of June 30, 1942, is at pages 60 to 63 and is not officially reported.

JURISDICTION.

The grounds upon which the jurisdiction of this Court is invoked are stated under division II at page 12 of the foregoing petition.

STATEMENT OF THE CASE.

A statement of the case is set forth under division I at pages 1 to 11 of the preceding petition, and the same is hereby adopted and made a part of this brief.

SPECIFICATION OF ERRORS.

Errors intended to be urged are those specified in the petition under division III at pages 12 to 14 entitled "Questions Presented," the Court of Appeals having ruled adversely to Central, or failed to rule, upon the questions there stated.

SUMMARY OF ARGUMENT.

A. The fund here in dispute belongs to Central as a matter of legal right.

B. Under the Natural Gas Act the Court of Appeals is without jurisdiction to inquire into or regulate the contractual relationship between a local distributor of natural gas and the ultimate consumers of such gas.

C. It was the mandatory duty of the Court of Appeals to retain jurisdiction of and determine who was equitably entitled to the fund here in dispute.

ARGUMENT.

A. The fund here in dispute belongs to Central as a matter of legal right.

This Court has held in *Southern Pacific Company* v. *Darnell-Taenzer Lumber Company*, 245 U. S. 531, and *Adams* v. *Mills*, 286 U. S. 397, that the right to recover excessive freight rates from a public carrier is vested in the party who paid such rates, irrespective of the fact that he may have passed on the burden thereof to someone else. In the last mentioned case this Court said:

> "If the defendants exacted from them (the parties who paid the rates) an unlawful charge, the exaction was a tort, for which the plaintiffs were entitled, as for other torts, to compensation from the wrongdoer."

The decision of the Court of Appeals awarding the fund here in question not to Central, who paid the excessive rates involved, but to Central's ultimate consumers is probably in conflict with the foregoing decisions of this Court.

It is a general principle announced by this Court in *Arkadelphia Milling Co.* v. *St. Louis Southwestern Railway Company*, 249 U. S. 134, and *In the Matter of Lincoln Gas & Electric Company*, 256 U. S. 512, that a party against whom an erroneous decree has been carried into effect is entitled, in the event of reversal, to that which he has lost thereby and that a bond posted for his benefit in the event the decree is reversed will be enforced according to its terms. In the instant case Central was required to pay excessive rates for natural gas as a result of the erroneous stay by the Court of Appeals of the rate order of the Federal Power Commission and the Natural Gas Companies filed a bond conditioned for the benefit of Central and the other local distributors involved to protect them against error in the entry of the stay order (R. 29, 30). Nevertheless, the Court of Appeals, after the stay was determined by the decision of this Court to be erroneous, disregarded the terms of the bond and awarded the fund to Central's ultimate consumers. This action by the Court of Appeals was probably in conflict with the last mentioned decisions of this Court, and thereby the court below so far departed from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision.

While Section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)) declares that the business of transporting and selling natural gas in interstate commerce for ultimate distribution to the public is affected with a public interest, nevertheless the Act does not contain any provisions indicating that rates charged by natural gas companies in excess of rates fixed by the Federal Power Commission shall be refunded to the ultimate consumers. On the contrary, Section 4(e) of the Act (15 U.S.C. 717c(e)) provides that:

> "* * * Where increased rates or charges are thus made effective, the Commission may, by order, re-

quire the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, *specifying by whom and in whose behalf such amounts were paid*, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. * * *" (Italics supplied.)

The apparent purpose of the above requirement that the Commission keep accounts specifying by whom and in whose behalf such amounts were paid is to provide a record so that refunds may be made to the persons who paid the excessive rates represented thereby. The Court of Appeals by denying Central's claim to the fund here involved and awarding the same to Central's ultimate consumers has failed to give any effect to the foregoing provision of the Natural Gas Act and has thereby decided an important question of federal law which has not been (so far as Central is informed) but should be settled by this Court.

B. Under the Natural Gas Act the Court of Appeals is without jurisdiction to inquire into or regulate the contractual relationship between a local distributor of natural gas and the ultimate consumers of such gas.

The Court of Appeals in its orders of February 14, 1944 (R. 129, 139, 131), in effect held that it had jurisdiction under the Natural Gas Act to determine without supporting evidence that the burden of excessive rates paid by the local distributors involved for natural gas during the period, while the court's stay order was in effect, was borne by the ultimate consumers thereof, but that it was beyond its jurisdiction to determine the reasonableness of the rates between Central and its ultimate consumers dur-

ing that period. Section 1(b) of the Act (15 U.S.C. 717 (b)) expressly states that the Act shall not apply to the local distribution or sale of natural gas. In view of this provision it seems clear that it was equally beyond the jurisdiction of the Court of Appeals to determine that the burden of the excessive rates paid by the local distributors during the period of the stay order was borne by the ultimate consumers. Nevertheless the Court of Appeals on the basis of this determination awarded the fund involved to Central's ultimate consumers. In effect the court thereby assumed jurisdiction to and did retroactively reduce rates between Central, a local distributor, and its consumers. This action of the court appears to be contrary to the express provisions of the Natural Gas Act and the court has thereby decided an important question of federal law which has not been (so far as Central is informed) but should be settled by this Court.

C. It was the mandatory duty of the Court of Appeals to retain jurisdiction of and determine who was equitably entitled to the fund here in dispute.

The Court of Appeals in its opinion of May 22, 1942, decided that it was its mandatory duty to take jurisdiction over the refund to be made by the Natural Gas Companies in conformity with the bond filed by them to obtain the entry of the erroneous stay of the rate order of the Federal Power Commission (R. 45). On July 1, 1942, the refund was deposited in the registry of the court and it thereby acquired jurisdiction over the same (R. 64, 65). Notwithstanding the above mentioned opinion, the Court in its orders of February 14, 1944, denied Central's original petition on the ground that the issues presented thereby were beyond its jurisdiction and directed that the fund which had been allocated to Central's ultimate consumers

be turned over to their respective municipal representatives without prejudice to Central (R. 129, 130, 131). By these orders the court in effect refused to consider the equities of Central's claim to the fund which had been so allocated and shifted the responsibility for the determination of these equities to another tribunal. In *United States* v. *Morgan*, 307 U. S. 183, and in *Inland Steel Company* v. *United States*, 306 U. S. 153, this Court held that where a fund has accumulated subject to the jurisdiction of a federal court it is the duty of the court to retain control over the fund and distribute the same to the persons entitled thereto. The Court of Appeals by directing payment of the fund here involved to the municipal representatives of the ultimate consumers without hearing any evidence and without prejudice to Central refused to carry out its duty as announced by this Court. Accordingly, the decision of the Court of Appeals on Central's petitions is probably in conflict with the foregoing decisions of this Court and the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

It is respectfully submitted that the prayer of the foregoing petition should be granted.

BERT L. KLOOSTER,
Attorney for Petitioner.

PERRY M. CHADWICK,
ROSCOE C. NASH,
Of Counsel.

APPENDIX.

PERTINENT SECTIONS OF THE NATURAL GAS ACT. (15 U. S. C. 717.)

Section 1. (15 U.S.C. 717.) (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

Section 2(6). (15 U.S.C. 717a(6).) When used in this chapter, unless the context otherwise requires—(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

Section 4. (15 U.S.C. 717c.) (a) All rates and charges made, demanded, or received by any natural-gas company

for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes or service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this Act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule

or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any state, municipality, or state commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: Provided, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the supension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the

Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

PERTINENT SECTIONS OF THE CODE OF IOWA OF 193.

Chapter 312.

HEATING PLANTS, WATER OR GAS WORKS, AND ELECTRIC PLANTS.

6143 Regulation of rates and service. They shall have power to require every individual or private corporation operating such works or plant, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, heat, water, light, or power, and to supply said city or town with water for fire protection, and with gas, heat, water, light, or power for other necessary public purposes and to regulate and fix the rent or rate for water, gas, heat, light, or power; to regulate and fix the rents or rates of water, gas, heat, and electric light or power; to regulate and fix the charges for water meters, gas meters, electric light or power meters, or other device

or means necessary for determining the consumption of water, gas, heat, electric light or power, and these powers shall not be abridged by ordinance, resolution, or contract.

Chapter 329.

CITIES UNDER SPECIAL CHARTER.

6788 Heating, water, gas, and electric plants. Sections 6129 and 6134 to 6143, inclusive, and 6134.01 to 6134.11, inclusive, are applicable to cities acting under special charters.